

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-402-C - ORDER NO. 2002-233
MARCH 28, 2002

IN RE: Application of Foxtel, Inc. for a Certificate of)	ORDER
Public Convenience and Necessity to Provide)	GRANTING
Interexchange Telecommunications Services)	CERTIFICATE FOR
within the State of South Carolina and for)	LONG DISTANCE
Alternative Regulation.)	AUTHORITY AND
)	MODIFIED
)	ALTERNATIVE
)	REGULATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Foxtel, Inc. ("Foxtel" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate, interexchange telecommunications services within the State of South Carolina. In addition, the Company requests that the Commission regulate its business services offerings in accordance with the principles and procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Foxtel to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Foxtel's Application

and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Foxtel complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on February 27, 2002, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Scott A. Elliott, Esquire, represented Foxtel. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Joe Wong, Chief Financial Officer and Secretary of Foxtel, appeared and testified in support of the Application. Mr. Wong testified that he is responsible for the financial organization of the business and is the record keeper of minutes of meetings. He additionally handles regulatory compliance issues for the Company. The record reveals that Foxtel is a Nevada corporation that has been authorized to transact business within the State of South Carolina. As a reseller of intrastate interexchange telecommunications services, Mr. Wong testified that Foxtel plans primarily to offer operator assisted calling to time share resorts throughout the State of South Carolina. Foxtel will offer inbound (800/877/888) and outbound message toll services to residential and business customers, utilizing switched and dedicated access, and debit card services. Mr. Wong explained that the parent company has provided call restriction services to resort companies for the past fourteen years. He testified that Foxtel was established in 1997 to become the parent company's certificated carrier for long distance services and that Foxtel had built a soft switch which is located in Nevada. Mr. Wong stated Foxtel has approximately 40,000 customers throughout the continental United States. He said Foxtel usually contracts with

management companies to provide assisted calling to time share resorts, plus other services. He stated that Foxtel does not plan to offer prepaid calling cards at this time but is aware of the Commission's requirement of a \$5,000 bond. He further testified that Foxtel does not intend to do telemarketing but the Company understands the Commission guidelines. The record reveals that Foxtel intends to market its services through direct sales by Foxtel's employees and independent sales agents. Mr. Wong testified that Elizabeth Rasco is the regulatory contact person and Fatima Rivas is the customer service contact person for the Company. Ms. Rasco can be reached at (800) 411-4778 and Ms. Rivas at (800) 444-1495.

Regarding the Company's technical abilities to offer telecommunications services in South Carolina, Mr. Wong testified that Foxtel expects to continue to utilize the interexchange carrier services of Qwest and AT&T. He stated that Foxtel will only utilize carriers properly certified by this Commission to provide service in this state. Foxtel is authorized to provide telecommunications services in fourteen states and is pursuing certification in twenty additional states. According to Mr. Wong, Foxtel has a two-tiered customer service operation. Level one is customer service for the parent company, AMI Telecommunications (AMI). When customers are staying at rental units or need to contact an operator as to how to place a long distance call, they will call AMI's customer service, available twenty-four hours, seven days a week. He said the second level of customer service is for Foxtel and usually involves billing inquiries after a guest has stayed in the rental units. He stated that Foxtel's name and toll free telephone number appear on the bill. Foxtel's customer service is available from 8:00 a.m. until 5:00 p.m.

Pacific Standard Time. Mr. Wong said that messages are taken by answering machine after those hours and are responded to on the next business day. He additionally testified that Foxtel can be reached by toll-free number at (800) 411-4778.

Concerning the financial ability of Foxtel to operate within South Carolina, Mr. Wong stated that Foxtel is a wholly-owned subsidiary of AMI and will rely on the parent company. He said AMI has a number of investors and an \$11 million dollar line of credit. He further testified that Foxtel's financial condition has improved since the Company submitted financial statements with its Application.

As to Foxtel's managerial abilities to offer the services it proposes to offer in South Carolina, the record reveals that Foxtel's management personnel have solid backgrounds in business management and systems support for telecommunications service. Mr. Wong testified that they represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. Mr. Wong said that prior to his employment with Foxtel in 1999, he was Chief Financial Officer of ASIMCO Direct Investment Funds headquartered in Beijing, China. He had also previously been with Arthur Anderson & Co. in Hong Kong and Denver, Colorado, as a Senior Auditor. According to Mr. Wong's testimony at the hearing and the record, Tom Reardon is President and Chief Operating Officer of Foxtel and has over ten years of business experience including sales, marketing and management. He previously was associated with Server Technology, Inc. and founded MyMemoryBank.com in February 1999. Mr. Wong offered that Tom Reardon had been instrumental in the development on an internal CRM software solution at

Foxtel. Additionally, Mr. Wong testified that Penelope Posa is Director of Sales and Marketing, responsible for evaluating and implementing markets and service strategies. He said she establishes the sales and customer service policies of the Company and ensures the products and services of the Company are properly supported by the network and technical staff. According to the record, Ms. Posa has previous sales and marketing experience in various capacities at Hyatt Hotels Corporation and at AMI Telecommunications.

Mr. Wong stated that Foxtel has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has been granted authority. Additionally, he said Foxtel has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, Foxtel has not marketed its services in South Carolina prior to receiving certification, and Foxtel has not received revenues from the completion of intrastate calls in South Carolina prior to receiving certification. Mr. Wong stated that Foxtel will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina.

Mr. Wong testified that Foxtel agrees to make all changes to its final tariff that were suggested by the Commission Staff, including the addition of the Company's email address and telephone number to the bottom of each page of the final tariff. He additionally agreed to file a copy of the Company's Bill Form with the final tariff in order to be in compliance with the Commission's Rules and Regulations. He stated he

understands and is aware of the Commission's requirements that all telecommunications carriers file a report on South Carolina operations, a gross receipts report, and a universal service contribution report on an annual basis. Mr. Wong also stated the Company does not currently intend to offer prepaid calling cards but understands the Commission's requirement of a \$5,000 bond if the service is ever offered.

He committed to file his Company's financial reports on a timely basis. Foxtel requested that all of its business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Foxtel's intent by this request to have its business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Mr. Wong testified that he understands that alternative regulation has now been modified by this Commission because of the re-imposition of rate caps with regard to certain "operator assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as their toll provider. Mr. Wong testified he understands that Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Foxtel is organized as a corporation under the laws of the State of Nevada and has been authorized to transact business within the State of South Carolina.
2. Foxtel is a provider of long distance services and wishes to provide long distance services in South Carolina.
3. Foxtel has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Foxtel to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.
2. The Commission adopts a rate design for the long distance services of Foxtel which are consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Foxtel including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order

Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Foxtel also.

3. The Commission adopts a rate design for Foxtel for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. Foxtel shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Foxtel shall file its proposed rate changes, publish its notice of such changes, and file affidavits

of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2001).

5. If it has not already done so by the date of issuance of this Order, Foxtel shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Foxtel shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 102-622.1 (1976) with its final Tariff.

6. Foxtel is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Foxtel resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Foxtel shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Foxtel changes underlying carriers, it shall notify the Commission in writing.

9. Foxtel shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Foxtel shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Foxtel shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, Foxtel shall promptly notify the Commission in writing if the representatives are replaced.

10. As a condition of offering debit card services, should the Company decide to offer these services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal

Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed annually.

If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, then the company will withdraw its cards from that retail outlet. This Commission strongly suggest that the Company enter into written agreements with its South Carolina retail outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card.

If the Company decides to offer prepaid calling service, then it shall amend its tariff to include provisions for prepaid calling cards. In addition, the Company shall include its name on the back of each of its prepaid calling cards.

11. With regard to the origination and termination of toll calls within the same LATA, Foxtel shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

12. The Company's request to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP) is granted.

13. The Company also requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (Supp. 2001) which requires the Company's books and records to be kept in the State of South Carolina. The Company desires to keep its books and records at its principal place of business in Reno, Nevada. We find that it would be unusually difficult for the Company to maintain its books and records in South Carolina. It would be in the public interest to have the company maintain its books and records at its principal place of business; therefore, the Company's request for a waiver of Regulation 103-610 is granted.

14. The Company in its Application additionally requested a waiver of any reporting requirements. Foxtel is directed to file all reports required by this Commission on a timely basis. Therefore, the request for a waiver of any reporting requirements is denied.

15. Foxtel is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

16. Foxtel shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Foxtel shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file

annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

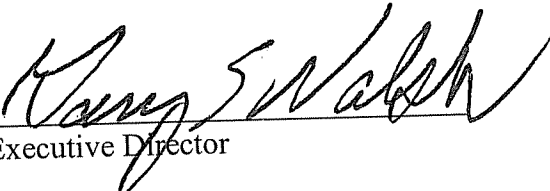
17. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

18. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)